

Christian Morality, Restorative Justice and the Law

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In dealing with issues of crime and law and order, the Church has to proclaim the age old message that Jesus came to bring the world: 'Good news to the poor, liberty to captives, new sight to the blind, healing for the sick, freedom for the oppressed.' That is our mandate. The teachings of Jesus can bring new light to bear on the difficult issues of conflict and crime in the community. They offers grounding principles to deal with them. These will involve promoting processes based on justice, equity, fairness and accountability. But such an approach must always be guided by wisdom, tempered by mercy, and allow for the possibility of healing, forgiveness and reconciliation for both victims and offenders.

In his 1988 social encyclical, *Sollicitudo Rei Socialis*, Pope John Paul 11 wrote of the conditions which prevail to produce what he called 'structures of sin'. He was referring to social systems which enslave or oppress people and attack the Common Good. These 'structures of sin' are found where people are crushed, marginalised or oppressed and are denied the opportunity to develop their God given gifts. Can we not say that the development of the modern prison industrial complex is such a 'structure of sin'? How can we as Christians stand in solidarity with the poor and their victims, speaking justice, development and peace, when so many are being crushed by such structures? Do we need to question the very legitimacy of prisons themselves?

Morality, Justice and the Common Good

In a widely praised pastoral letter, the Catholic bishops of England and Wales defined the basis of morality as *the right and fair way for people to relate to one another and to the world around them*. In its embrace sits one of the most important social moral principles of all - the development, enhancement and protection of **the Common Good**. This is the principle that has attempted to hold the fabric of society together on some form of just basis for centuries. It is based on the notion that each person is a social being and reaches his or her potential in relationship with others. Collectively, they form a society. The bishops defined the Common Good as being

*the whole network of social conditions which enable human individuals and groups to flourish and live a fully genuine human life. Far from each being primarily for him or herself, all are responsible for all.*¹

They expanded the concept in order to meet the particular needs of the modern world. They said that the Common Good cannot exist today without the presence of four other principles that are essential to its realisation. The first is **the principle of subsidiarity** supports a dispersal of authority as close to the grass roots as good government allows. It prefers local over central decision-making. It has everyone working at the level of his or her capacity.

¹ Pastoral Letter, *The Common Good and the Catholic Church's Social Teachings*, Catholic Bishops of England and Wales, 1996

The second is **the principle of solidarity** implies the interconnectedness of all human beings, one with the other, regardless of race, gender, culture, age or religion. We form one family. Solidarity teaches us to stand with one another, particularly when either of the final two principles is threatened - that of human rights or an option for the poor.

The third is **the protection of human rights**, our understanding of which has been accelerating this century. No longer are we able to dehumanise various groupings of people because of their differences to us. Each person now has certain legislated protection under charters from the United Nations which help protect the fabric of the Common Good.

The fourth is **an option for the poor**. By that is meant that the most vulnerable, the poorest economically, the most handicapped must be protected and respected if the Common Good is to be achieved.²

Justice and the Law

Given this starting point, what then should be the relationship between the justice and the law? It is appropriate to start by quickly looking at what justice is since it is the basis from which we should act. The bishops say

In essence justice is an active and life giving virtue which defends and promotes the dignity of every living person and is concerned for the Common Good insofar as it is the guardian of relations between individuals and peoples. Justice is at the same time a moral and a legal concept in that it fosters an equitable sharing of burdens and benefits. It makes whole and leads, not to division, but reconciliation. At its deepest level it is rooted in love and is tempered by mercy.³

From justice flows the law which also has two dimensions, moral and legal. Law is built on morality and is never neutral, always reflecting a system of values. Fairness, truth, honesty, compassion and respect for people are the basic tenets of an acceptable morality that flows from justice and seeks to protect and enhance the Common Good.

Law and justice are not synonymous terms. The law is not sacrosanct and does not stand-alone. What is sacrosanct is justice. In a secular society, for law and justice to meet, they have to be grounded in the principle of the Common Good. There is no other way. The law is the mechanism by which either the Common Good or sectional interests are achieved. Injustice occurs when the law is written by powerful groups with sectional interests. This is the basis for unjust law. Sectional interests defined much of the legislation in the past that discriminated against indigenous peoples. The laws relating to apartheid in South Africa are an obvious case. Just law and just government should define, defend and protect the Common Good. This is precisely what government in a true democracy should be about.

Biblical Justice

For the past 800 years if not longer, western civilisation has been built on underlying

² Pastoral Letter, op cit.

³ Pastoral Letter, op cit.

Christian moral principles which have guided the way we live. In their simplest form the Ten Commandments of the ancient Hebrew Scriptures and the central command of Christ that we were to love God and our neighbour summed them up.

The Bible speaks often about crime and punishment. Naturally it deals with what flows from violations of law, and in particular with what flows from violations of its most sacred law, the Torah, which contains the commandments of God. But all law was not of equal status in biblical times. Consequently, how one dealt with offenders varied depending on a wide variety of circumstances.

There was no centralised code of law or criminal justice system such as we have now. A Jewish understanding of Hebrew law has often been quite different from a Western understanding of the same law. So when Jesus is accused of breaking the law on the Sabbath, rather than being arrested and charged, he merely has an argument with his accusers about the ruling itself and the nature of law, and he is left to move on.

There are several key words in Scripture that indicate the presence of justice in a much fuller sense than what we usually understand. A key word for justice is *t'sedeka*, which Martin Buber, the famous Jewish scholar, translates as 'to bring the truth, to be truthful, to speak the truth'. Justice is very much related to a way of life, a personal commitment of lifestyle, not just an academic theory. A person who lives *t'sedeka* seeks to live justly and to bring justice eventually to all. *Hesed* is also an important word and reflects the love that contains justice as its motivating force. *Mishpat* reflects the social expression of God's justice in the relationship of God with the people, and the people with one another.

Justice is part of the very essence of God, as can be seen from reading the psalms and the prophets, especially Isaiah, Jeremiah, Micah and Amos, and from reflecting on the Gospels. As theologian Kevin O'Reilly says:

*In the Bible, God is called the just one. What is this justice of God? According to the authors of the Hebrew Scriptures, the justice of God is not the quality whereby God rewards the good and punishes the wicked. God is just when he intervenes in the lives of the underprivileged, especially orphans and widows, to save them from the injustices of men (Deut10/18). God is just when he defends the cause of the innocent. God is just when he establishes those who have been exploited by wicked men. God is just when he saves the poor.*⁴

Surely the scriptural quote most abused and taken out of context has been that of 'an eye for an eye'. Public perception of its meaning is usually the opposite of what is intended. The concept of *lex talionis*, the law of proportionality, simply says that you should never claim more than the value of what is damaged. If property worth 100 gold coins is stolen, then you cannot claim 200 coins in return. If you took more than what was just, then you in turn could be punished. Martin Buber in his German translation of the Scriptures, translates 'an eye for an eye and a tooth for a tooth' as 'an eye for the value of an eye, a tooth for the value of a tooth'. It is a concept that occurs only three times in Scripture, whereas mercy appears several hundred times.⁵ The emphasis in Scripture was usually on restitution and restoration, not vengeance and

⁴ Kevin O'Reilly, *Towards a Christian View*, Prison Chaplains' Association, New Zealand, 1982

⁵ Exodus 21/21-23; Leviticus 24/19-20; Deuteronomy 19/21

punishment. Restitution was seen as a way of setting things right. If property was stolen, then the property should be returned. If damage was done to someone's house or field, then the person responsible for the damage should repair it. Later in the New Testament, Christ specifically rejects this notion when he says quite emphatically: 'you have heard it said "an eye for an eye". But I tell you, do good to those who harm you.' (Matt 5/38-42)

The focus on crime in biblical times was not so much on individuals as on the community. Corporate responsibility was central to the Hebrew understanding of crime. The Scriptures renounced any scapegoating that claimed that crime was only the responsibility of a few evil individuals within the society. When the law was broken, there was corporate responsibility. Violence and breach of law pointed to a crisis in the very fabric of the society.

The central feature of biblical law is a constant calling forth of the people to a future promise. The emphasis is on the future health and well being of the community, and not on the immediate transgressions of the law. The covenants agreed to by the people with Yahweh always emphasises this future direction.

Shalom, Social Justice and the Covenant

The three most central concepts of biblical law and justice relate to **shalom**, **social justice** and the **covenant**. Crime was a violation of shalom, of social justice and of the covenant. Repairing the damage was the key, not punishment. In his seminal book on restorative justice, *Changing Lenses*, Howard Zehr points out that **shalom** is not just a peripheral theme of Scripture but a basic core belief from which God's vision and plan for creation and the development of the human family flow. Hence notions of salvation, atonement, forgiveness and justice have their roots in shalom. In English shalom is usually translated to mean peace, but that is a very inadequate translation.⁶ Perry Yoder describes three basic dimensions to its meaning. They are physical well being, including adequate food, clothing, shelter and wealth; a right relationship between and among people; and the acquisition of virtue, especially honesty and moral integrity. The absence of shalom means the absence of one or other of these features.⁷ There is a flow-on of this concept in the New Testament where Christ's life and teachings and eventually his death and resurrection transform relationships between and among people, thus inaugurating the New Creation, wherein shalom is lived by believers.

The great recorded biblical voices of Jeremiah, Amos, Micah, Isaiah, Zephaniah and Ezekiel remind the people that to remain blessed required they practise **social justice**. These ancient prophets crystallise the centrality of social justice as a prerequisite for God's continuing blessing. Time and again they remind their listeners that God will not continue to uphold the people if they refuse to practice justice, especially to the poor, the needy, the oppressed, the marginalised. It is from this understanding that the prophets are able to warn that the entire nation is doomed because some widows have been mistreated or because the hungry have not been allowed to glean the fields. Not only all the people but also the land itself is caught up

⁶ Howard Zehr, *Changing Lenses*, Herald Press, Scottsdale, Pennsylvania, 1990

⁷ Perry Yoder, *Shalom: the Bible's Word for Salvation, Justice and Peace*, Faith and Life Press, Newton, Kansas, 1987

in sin and all its consequences, for the meadows lie barren and the mountains quake and the trees bear no fruit. For Israel, the fullest response to crime was not the isolated punishment of an individual law-breaker, but the repentance of the entire nation. It is the voice of prophets down through the centuries to our own day. Without freedom and justice, there can be no salvation.

The other major concept that has a direct relationship with law and justice is that of **covenant**. A covenant is a binding agreement between parties. There were several in the Scriptures, starting with God and creation, God with Abraham, Sarah and the newly created People of God, God with Moses representing the people on Mount Sinai when the Ten Commandments were given. The culminating covenant came with Jesus and the whole of humanity at the Last Supper. This new covenant opened up for humanity a new way of viewing things, of relating, of recognising the dignity of each person within the context of their community. Crime was a violation of the covenant. It needed to be repaired.

The test of justice in the biblical view is not whether the right rules are applied in the right way. Justice is tested by the outcome. The tree is tested by its fruit. It is the substance, not the procedure, that defines justice. And how should things come out? The litmus test is how the poor and oppressed are affected.

In biblical times such justice was enacted on an everyday basis in Jewish settlements. Citizens went to the city gates to seek justice from the judges or elders who presided there for this purpose. The whole focus for this 'court' setting was to find a solution for the aggrieved person. The judge was not primarily the one who rewarded some (distributive justice). He was the one who created order and restored what had been destroyed.

Restoration, then, was the keynote, not retribution. The words in Hebrew for 'paying back' and 'recompense', *shillum* and *shillem*, have the same root words as shalom. Restoring shalom was what such courts were all about. Helping people re-establish their covenant with God and one another was at the heart of this justice. When punishment was meted out, and on occasion this included execution, it was always seen as a necessary element to the restoration of the covenant and the re-establishment of shalom.⁸

How then have so many come to see God as a punishing High Court judge-type figure who hovers over our everyday activities like an eye-in-the-sky policeman? This clearly is not the emphasis of the Scriptures. It seems we have done that by largely misinterpreting the actual meaning of some key passages of Scripture, and by failing to recognise the context within which they were written.

The New Testament and Justice

In the New Testament Jesus clearly states that justice should be based on principles of forgiveness and reconciliation; that retaliation plays no part. He forgave the Genasene maniac, the prostitute, the adulteress, the tax gatherer who was an extortionist, the robber. He charged us both to place distinctions between wrongdoers and the virtuous, yet to see ourselves as all in the same camp - brothers and sisters with varying

⁸ Howard Zehr, op cit

strengths and weaknesses.

In the story of the rich man and Lazarus (Luke 16/19-31), Jesus explicitly teaches that the poor man has rights and the rich man is obliged out of a sense of justice, not charity, to share what he has from his table. Here Luke draws on Leviticus 25/35, which spells out the obligations of the rich to the poor. The rich man fails to recognise that though he may well have come by his wealth by perfectly legal means, in justice he still owes part of his wealth to Lazarus, who has nothing. He fails and is condemned.

Here Jesus explicitly expounds the nature of justice in terms of sharing with the needy, the poor, the vulnerable. Lazarus and the rich man can only ever meet and be reconciled as brothers through the sharing of the riches. Reconciliation, then, is at the heart of the New Testament understanding of justice.

Jesus specifically rejects 'an eye for an eye', that proportional response so abused by popular usage. 'If anyone hits you on the right cheek, offer him the other one as well. Give him your coat and your tunic, walk two miles not one.' (Matt 5/38) This is radical stuff - and quite practical today if properly understood. Jesus is asking for a generous response from those who have been victimised by crime. He knows - indeed God teaches - that unless people take such an attitude, they will usually end up becoming doubly victimised. The first time will be with the actual crime. The second will be through the hurt, bitterness and feelings of vengeance that can so easily poison a person's spirit if allowed to germinate. These are wise teachings indeed.

Jesus teaches generosity of spirit when it comes to dealing with crime. To the woman facing the death penalty, he said simply 'go and sin no more'. He rejected any notion of just desserts in the story of the prodigal son and loving parent (Luke 15/11-32) and in the vineyard workers parable (Matt 20/1-16). In the latter, the day workers give us another reminder as to how God's justice works. Each got paid at the end of the day what they needed to feed their families, even though they had worked uneven hours. It's a parable of restorative justice. Provide what is needed. Forgive seventy seven times seven. Surely too hard? Not so, says Jesus. It's not easy but it can be done. In effect he teaches that if we don't attempt these very difficult matters then we run the grave risk being damaged spiritually.

Many would argue **imprisonment** is condemned by New Testament teachings where it represents a power of death that is separate from and opposed to God. Death is also present in other forms, including illness, hunger, injustice and opulence. The proclamation of liberty to captives does not relate simply to a notion of spiritual freedom. Such an interpretation helps make sense of the miraculous nature of the deliverance of the apostles from prison in two instances, Acts 5 and 12. The releases are an assertion of divine authority over the state and over the fallen principalities and powers.

A final word on justice at the time of Jesus concerns the notion of **sanctuary**. It is a further illustration that Jewish law valued life over property, and valued people over punishment. Several mentions are made in the ancient Scriptures to cities of refuge (Deut 4/41-3, 19/1-3, Numbers 35/6-34). Both Israel and its neighbours recognised the right of a person needing protection from revenge to go to the altar in the temple, where the person was to be kept from harm until the matter could be decided through

formal judicial process (Exodus 21/12-14). But the altar might be far away, and the wrongly accused person might be caught before reaching the protection of the sanctuary. So the law provided for six cities of refuge, which were to be centrally located and reached by well-built roads, so that someone suspected of murder could get to protection easily. Mercy and fairness lie at the heart of sanctuary. People were more important than punishment and, as a result, procedural safeguards were built into the law so that the rights of the offender could be protected while the case was being considered by the judicial authorities.

Respect, Mercy, Forgiveness and Pardon

A reflection on justice and a fully developed morality must include a consideration on the place of **respect, mercy, forgiveness and pardon**. These are among the most mature and demanding of virtues. True justice and the common good cannot be achieved without employing them.

A sound morality starts with a **respect** for the dignity of all. This was spelt out yet again in the World Day of Peace Message of John Paul II in January 1999. *The dignity of the human person is a transcendent value, always recognised as such by those who sincerely search for the truth. Indeed, the whole of human history should be interpreted in the light of this certainty. Every person, created in the image and likeness of God and therefore radically orientated towards the Creator, is constantly in relationship with those possessed with the same dignity....No affront to human dignity can be ignored, whatever its source, whatever actual form it takes and whenever it occurs.*⁹

The current criminal justice system displays a lack of respect to all involved. We demand respect towards people and property in our law, yet show little in our systems dealing with lawbreakers. Any one who has worked in a prison or even visited one will know exactly what I mean. Depersonalisation is built into the very fabric of the system itself. The only thing missing is the numbering on inmates' chests. It all reflects a lack of respect for inherent human dignity. We should not be surprised that such lack of respect carries on in the wider community because our policing, court and penal systems pay such little attention to it.

A systemic lack of respect can be seen through the widespread use of imprisonment whereby more than 8.5 million people in the world are denied their human dignity, and freedom of action, expression, movement and will. Usually it is the poor and those from racial and ethnic minorities who are most incarcerated.

The notion of a loving and merciful God is one that fills the pages of Scripture. Here **mercy** is portrayed as an intrinsic dimension to the very being of God. We have only to skim through the pages to see God portrayed as a protective presence, a helper who offers hope, and one whose power is merciful and benevolent, one who makes faithful and enduring commitments. Mercy is the foundation of God's covenant love. Jesus is portrayed in the New Testament as the merciful one. We hear about his responses to the poor and oppressed, widows and single women, social outcasts, sinners, the sick, the wayward. He feeds the five thousand, heals the blind, the lame, lepers. 'Have

⁹ John Paul II, World Day of Prayer, January 1999

mercy on us, Son of David', they cry (Matt 9/27). They had faith in his mercy.¹⁰

Forgiveness is not something that the victim does for the benefit of the offender. It is the process of the victim letting go of the rage and pain of the injustice so that he or she can resume living freed from the power of the criminal violation. We encounter injustice daily in our homes, our places of work and in the affairs of nations. We can ill afford to respond to the grievances, large or small, in ways that are likely to escalate conflict and perpetuate cycles of violence. In many situations it is precisely the quest for justice as retribution that prevents many grievances from ever being channeled into forums that can bring resolution and redress. Limiting justice to retribution turns interpersonal disputes into tit-for-tat feuds, and border skirmishes into fully-fledged wars.

As Zehr points out, for victims of crime, forgiveness is letting go of the power that the offence and the offender have over them, while not condoning or excusing that person. It means no longer letting the offence and the offender dominate. Without this experience of forgiveness, without this closure, the wound festers and takes over our lives. It, and the offender, are in control. Real forgiveness allows one to move from victim to survivor.

Just as victims need an experience of forgiveness, so do offenders. How else can they put the past behind them and positively confront the future? The retributive criminal philosophy provides little encouragement and virtually no room for an offender to confess, repent, change direction, turn life around, admit responsibility and make things right. The justice system simply encourages anger, rationalisation, denial of guilt and responsibility, feelings of powerlessness and dehumanisation. As with victims, the wounds just fester and grow.¹¹

The ultimate expression of forgiveness lies in **pardon**. Pardon is an essential characteristic of the Christian community. It is a virtue that the Church rarely preaches these days, especially in the area of criminal justice. Yet its importance cannot be over estimated. It has a central place in Christian tradition. If God has pardoned us through Christ, then we need to be able to pardon one another. To pardon means not to fixate on past grievances but to create the opportunities for people to put the past behind them and move forward in new and constructive ways. To pardon is to cancel out the past, to allow the past to be the past no matter how horrific and unjust it may have been, and to reach for a new future.

We should not fear the reaction of sections of society through our preaching of the huge potential of pardon. Pardon lies at the heart of compassion and sits at the centre of the theology of the Cross. It is only when pardon can be exercised that we can confidently build Christian community with one another.

Restorative Justice

Restorative justice is a gospel response to conflict and crime, even the most serious. This was recognised by the US Catholic bishops in their criminal justice pastoral letter of 2001 in which they emphatically endorsed restorative justice as being a

¹⁰ Alice Sinnot RSM, *Mercy – Ever Ancient, Ever New*, Listen Magazine, 1999

¹¹ Howard Zehr, *Changing Lenses*, op cit

process reflective of the gospel. So have various bishops' conferences, and the World Catholic Prison Chaplains' conference in Mexico in 1999.

The goals of restorative justice are respectful of all participants. Victims and offenders assume central roles, and the State takes a back seat. The process does not focus on vengeance and punishment but seeks to heal both the community and the individuals involved. This is done by a process that puts the notion of reparation, in its widest sense, at the centre.

The goal of restorative justice is to heal the wounds of every person affected by an offence. It obviously requires the co-operation of all parties. The offender, to be involved in any useful way, must acknowledge responsibility for the crime committed, and express honest regret. More than that, the full implications of the offence need to be spelt out and confronted as the offender deals with the causes of offending, where possible making restitution, and giving concrete evidence of more appropriate future behaviour.

The victims, to be part of restorative justice, examine their feelings and take any advantage of any support network which will facilitate healing. Victims are helped to see that their own victimisation is only intensified by feelings of retributive action against the offender. Where appropriate they become involved in the process of restorative justice with the offender and the community.

The community's role is to create the conditions most favourable to the restoration of both offender and victim. It aids the healing process by providing mediators, judges and the like. Providing there is co-operation, the parties reach agreement about repairing the damage where that is possible. Obviously in some cases like murder or rape it is not. Besides whatever reparation is possible, the offenders may be required to work in the local community for a set period, do periodic detention or even go to prison. The important thing is that no one gets shut out of the process.

All those involved get a chance to put a human face on the crime. They get a chance to begin a process of healing. They become empowered again. The offenders get to take some responsibility for their criminal behaviour. Each of these processes produces an added dividend for family life and the wider community. There will be less alienation, stronger bonding among family members, and a greater degree of personal and social empowerment.

Conclusion

Prisons victimise the poor, they do not provide justice, they offend against the Common Good, and they are a direct contradiction to the teachings of Scripture. On a global scale they have become 'structures of sin'. Christian tradition and the Scriptures offer constructive and positive insights, values and guidelines for conducting just and fair processes to help deal with criminal offending. The Church must challenge any criminal justice process or prison system that dehumanises people and fails to treat them with dignity and respect. If we are going to reconcile and restore relationships and bring Christ's healing power to our ministry, then we need to revisit our biblical and Church traditions, reflect upon them and seek to promote new ways of conducting

criminal justice in the years ahead.

Restorative justice, practised now worldwide and supported by the Church in many countries, provides an important method.

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